

REMARKS

In the Office Action, the Examiner rejected claims 18-26 and 37-43. By this paper, the Applicants cancelled claims 39 and 40, added claim 44, and amended claims 18, 21, 24, 25, 37, and 41 for clarification of certain features to expedite allowance of the present application. Applicants affirm that claims 27-36 were withdrawn. These amendments do not add any new matter. Upon entry of these amendments, claims 18-26, 37, 38, and 41-44 remain pending in the present application and are believed to be in condition for allowance. In view of the foregoing amendments and the following remarks, the Applicants respectfully request reconsideration and allowance of all pending claims.

Claim Rejections under 35 U.S.C. § 102

In the Office Action, the Examiner rejected claims 18-20, 22-2, 37-40, 42, and 43 under U.S.C. § 102(b) as anticipated by Rafert et al (U.S. Patent No.5,817,008). Figures 1-4 (and the description thereof) disclose a conformal pulse oximetry sensor. The adhesive of Rafert et al. is considered to be adapted to attach the sensor to a subject's forehead or any of the claimed headcoverings. Without claiming further structural details, the cable of Rafert et al. is considered to be "adapted to extend... through a portion of" any of the claimed headcoverings. Applicants respectfully traverse this rejection.

Claims 18-26, 37-40, 42, and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by DeLonzor (U.S. Patent No. 5,246,003). Applicant's attention is drawn to Figures 6 and 7 and the description thereof. The adhesive of DeLonzor is considered to be adapted to attach the

sensor to a subject's forehead or any of the claimed headcoverings. Without claiming further structural details, the cable of DeLonzor is considered to be "adapted to extend... through a portion of" any of the claimed headcoverings. Applicants respectfully traverse this rejection.

Claims 18-20, 22-25, 37, 38, 41 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Toomim et al. Applicant's attention is drawn to Figures 1-3 and the description thereof. Applicants respectfully traverse this rejection.

Anticipation under section 102 can be found only if a single reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985). For a prior art reference to anticipate under section 102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). To maintain a proper rejection under section 102, a single reference must teach each and every limitation of the rejected claim. *Atlas Powder v. E.I. du Pont*, 750 F.2d 1569 (Fed. Cir. 1984). Accordingly, the Applicants need only point to a single element not found in the cited reference to demonstrate that the cited reference fails to anticipate the claimed subject matter. The prior art reference also must show the *identical* invention "*in as complete detail as contained in the ... claim*" to support a *prima facie* case of anticipation. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989).

Turning to the claims, the present independent claims 18 and 37 recite the elements "a headcovering" and "a neonatal stocking cap," respectively.

Addressing the cited references, neither Rafert nor DeLonzor disclose nor suggest headcoverings of any sort, including neonatal stocking caps. As neither Rafert nor DeLonzor disclose all of the elements of the independent claims 18 or 37, neither of these cited references is sufficient to support a rejection of the pending claims under 35 U.S.C. 102(b).

Turning to the Toomin reference, Applicants maintain that Toomin does not disclose all of the elements of independent claims 18 or 37. Although Toomin discusses a headcovering into which a sensor may be incorporated, there is no disclosure of a neonatal stocking cap with an opening through which a sensor cable may extend. As such, independent claim 37 is not anticipated. Independent claim 18 recites a headcovering including a sensor, where the sensor's cable extends from the substrate at an angle not in-line with an imaginary axis extending through the emitter and the detector. Such a configuration is advantageous as it allows the sensor cable to be directed into the headcovering so that it may be embedded therein, or may extend towards the top of the head so that it is generally out of the way of the patient and won't be tangled or inadvertently pulled. The Examiner is relying on Figure 1 of Toomin to show a cable with a configuration not in-line with an imaginary axis extending through the emitter and the detector. This is inappropriate, as Figure 1 is clearly a schematic diagram that is not meant to indicate physical arrangement of the sensor parts. This is clear when examining Figure 2, which is a detailed view of the sensor and cable configuration. Reference numeral 42 shows a cable connector in-line with the emitter and the detector and that clearly indicates that the sensor cable of Toomin is arranged to extend along an axis in-line with the emitter and the detector. As the

sensor cable of Toomin does deviate from the axis along the emitter and the detector, there can be no anticipation of claim 18.

For these reasons, the Applicants respectfully requests withdrawal of the rejections under 35 U.S.C. § 102.


CONCLUSION

The Applicants respectfully submit that all pending claims should be in condition for allowance. However, if the Examiner believes certain amendments are necessary to clarify the present claims or if the Examiner wishes to resolve any other issues by way of a telephone conference, the Examiner is kindly invited to contact the undersigned attorney at the telephone number indicated below.

The Commissioner is authorized to charge the requisite fee of \$790.00, for the request for continued examination, and any additional fees which may be required, to the credit card listed on the attached PTO-2038. However, if the PTO-2038 is missing, if the amount listed thereon is insufficient, or if the amount is unable to be charged to the credit card for any other reason, the Commissioner is authorized to charge Deposit Account No. 06-1315; Order No. THYC:0046/FLE (P0414S:P).

Respectfully submitted,

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